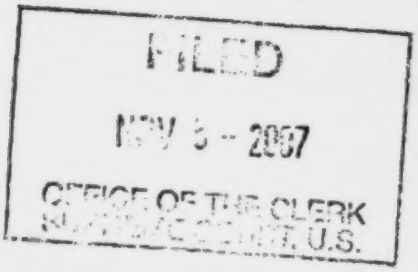
(2)



No. 07-223
In The
Supreme Court of the United States

October Term 2006

STAN JONES, Libertarian Candidate for Governor
and BOB KELLEHER, Green Party Candidate for Governor
Petitioners and Appellants,

v.

MONTANA UNIVERSITY SYSTEM,
And MONTANA STANDARD, et al.,
Defendant and Respondent

Petition for Writ of Certiorari

Petition for Rehearing on Denial of Writ

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A Rule 44 (¶ 2) Petition for Rehearing on Denial of Writ is limited to setting forth "*intervening* circumstances of a *substantial* or controlling effect *or* to other substantial grounds *not previously presented*", to-wit (i) remarks of Ranking Judiciary Committee Member Senator Arlen Specter, TIME, Oct. 22, 2007; (ii) other Chief Justice "work load" comparisons, especially when (iii) combined with the new "*judicial restraint*" doctrine of the present Court, which has inevitable result of judicially disinheriting Montana's poor - who (iv) are poor because of the inherent inability of "separation of powers" government to assist the poor when (v) it was designed by Montesquieu, who preached the monarchical British Constitution was the best in the world and (vi) designed to protect the nobility and rich property owners, and not the poor; summaries of articles by Prof.. Steven Lubet, NW University Law School, *"Disqualification of Supreme Court Justices,* 80 Minn. L.Rev. 657, and Christopher Riffle, *Justice Scalia's Refusal to Recuse Himself, Cheney v. U.S. District Court, 541 U.S. 913,* 84 Neb.L.Rev. 650

State "Separation of Powers" governments violate U.S. Constitution, Art. IV, § 4

"... [t]he nation's **biggest wage gap is in Montana**, where **women** take home a median of 67¢ for every $1 men make" *Las Vegas Sun,* Oct. 4, 2005 (U.S. Census Bureau data). In 2003 the Bureau of Indian Affairs reported the "Fort Belknap Indian Community" unemployment rate was **70%**. 9% of those employed continued to live at or below 150% federal poverty level. **69%** of the Blackfeet Tribe was unemployed *and* 48% of those employed remained at poverty level.

Art. IV, § 4 of the U.S. Constitution requires that

> "*The "United States shall guarantee to every State in this Union a Republican form of government",* commonly known as the "Guarantee Clause".

Separation of Powers government allows Legislature meeting only every two[1] years and then for only 89 days to ignore the needs of the poor, jobless and underemployed, deregulation being a classic example. From being an *exporter* of electricity Wall Street's Goldman Sachs and now bankrupt Montana Power convinced an uninformed legislature into passing deregulation doubling Montanans' gas and power bills!

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[1] The late Leo Graybill, Jr. of Great Falls, 1972 Constitutional Convention President, said "if Montana Power had its way the legislature would only meet every 10 years."

Separation of Powers also means the poor, unemployed and underemployed must look to the courts for relief which is futile if the courts practice "judicial restraint".

Duty of Courts to Enforce Art. IV, 1§ 4

As head of the Third Branch of government this Court is obligated to enforce Art. IV, § 4 in any case where a *party has standing.* Petitioners have such "standing". Further, the "Republican Form of Government" issue was present at the District and Supreme Court levels. It is ripe for review and enforcement by this Tribunal.

Rule 22 Motion Now Reviewable

On Sept. 2, 2006 Plaintiffs filed a Rule 22 Motion that the case be returned to the District Court with directions to take expert testimony on whether Montana's separation of powers government [Montana Constitution, Art. III, § 1] comports with the definition of a "republican government" The Montana Supreme Court denied the Motion. Its Order is ripe for review by this Court.

Request Judicial Notice "Separation of Powers" Government is not "Republican"

The Court is requested under F.R.Evid. 201(b) and (d) to judicially notice as an adjudicative fact separation of powers government is by definition not representative or republican and was never intended by Montesquieu, Hamilton, Edmund Randolph or Madison to be so. Later first New York Chief Justice

Robert Yates writes in his diary on May 29, 1787 Gov. Randolph "candidly confessed his 15 resolutions forming a more *energetic* (emph supp) government ....(meant) the idea of (13 sovereign) States should nearly be annihilated". Robt. Yates, *Secret Proceedings & Debates, Phil. 1787,* publ. at Albany, July, 1821, p. 101.

> **Republican government.** A government in the republican form; a government of the people; a government by *representatives chosen by the people.* (emph supp) *In re Duncan,* 139 U.S. 449, 11 S.Ct. 573, 33 L.Ed. 219 **Black's Law Dictionary,** p. 1171, West Publ. Co., St. Paul, MN, 5th Ed., 1979

"*Representatives*" includes the legislature as well as decision makers who include the heads of Montana's twenty (20) administrative departments now appointed by the governor, e.g., the head of the department of public health [Cfr call of Michelle Lee-Alverson in *Butte Weekly* of July 14, 2004 that head of Montana Dept. of Health be elected].

Twenty Six (26) Nations *including Five (5) Former Communist States* Better Off than U.S.

"Separation of Powers" government means 26 nations *including five (5) former Communist countries* [Poland, Hungary, Slovenia, Czech Republic, & Bulgaria] have a higher standard of living than the

United States. National Ranking is determined by ten (10) subindices[2] drafted by Prof. Richard J. Estes of the School of Social Work, U. of Penna., Philadelphia beginning in 1970. All twenty-six countries have "unity of powers" (i.e., parliamentary) government.

Americans long ago accepted the "buying and selling of high public office" aka "s/he who has the most money wins!" The rich also understand that if the United States switches to a U.S. Parliament, they cannot prevent minor parties from electing a small number of candidates, most with views directly opposed to theirs.

In 2004 the Montana Democratic candidate for governor prevailed upon a Republican state Senator from Billings to be his running mate telling voters "we need less bickering and more bi-partisanship", collected a big bundle of cash, and the voters elected the team. They are so popular they just announced running for re-election.

FEDERALIST SOCIETY Goal: Expanded WAR-TIME **Powers of Presidency**

The FEDERALIST SOCIETY also pushes for "expanded powers of war-time presidents". http://www.pfaw.org/pfaw/general/default.aspz?oid=31

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[2] Education, Health /Longevity, Women Status, Defense Effort, Economic, Demography, Geography, Political Participation, Cultural Diversity, Welfare Effort.

49 including "an informal network of people with shared views such as job placement" e.g., law clerks. http://www.pfaw.org/pfaw/general/default.aspz?oid=3149

War, Inflation and the Poor

War is doubly painful for the poor. They are the first to be killed as privates in a war. If there are no price controls, the poor get a "double whammy". This vulnerability requires not "judicial restraint" but rather serious "judicial scrutiny

War can get personal!
FEDERALIST SOCIETY Presidential *Private* War Powers and CAMBODIA

In the 1950's Counsel and his wife, Geraldine, often on weekends danced at the Bolling Field "O" Club in D.C. as guests of her cousin, Mimi Killian, and Mimi's Air Force husband, Capt. Mel Killian. During Nixon's "private" war in Cambodia, Colonel Killian's plane was shot down by a Soviet SAM. Ground personnel later found his helmet on the jungle floor. Mimi died a short time later of unknown causes.

FEDERALIST SOCIETY "Separation of Powers" Presidential War Powers & IRAQ

In 2004 Sgt Matt Kelleher of Billings received the Purple Heart for a minor injury when his Hum Vee hit a land mine in October, 2003. Under separation of powers continuance warfare has become an accepted

way of American life, where often an *unelected* Secretary of Defense often also appears to be an *unelected* Secretary of State.

FEDERALIST SOCIETY "Separation of Powers" Presidential War Powers & COLOMBIA & "K" Street & Occidental Petroleum & Montana's 2006 Senatorial Race

Vatican Radio Jan. 2006: "In 2005 twenty six bishops, priests, nuns and lay religious were martyred – mostly in Colombia."

> "Dispossessed since 1985
>
> "The verb *desterrar* ... *means* "to evict someone from territory or land by a judicial order or governmental decision" *The Dispossessed* [*Los Desterrados of Colombia*], Alfredo Molano, Haymarket Books, Chicago, 2005, p. 15
>
> "My oldest child, Blanc, who was ten, was in shock from seeing so much death, and she asked me over and over to put something in the hole in her father so it would stop bleeding." *Idem*, p. 151
>
> "...the violence...since before the assassination of Gaitán in 1948, has claimed more than a million lives." *Id.*, p. 42
>
> "... It is also known that *Occidental Petroleum exerted pressure on the U.S. Congress to expand* "Plan Colombia's scope from the Putumayo (as

previously planned) to areas where the company has interests." *Idem*, p. 8. (emph sup;)

"The interests at stake

Colombia *third* largest recipient of U.S. Military Money

"Few people in the U.S. know that Colombia is the third-largest recipient of U.S. military aid in the world; that more journalists, teachers, and trade unionists are killed every year in Colombia than anywhere else in the world; and that the perpetrators of the violence in Colombia are, overwhelmingly, the very military that the United States trains and supplies – together with its paramilitary allies.

"Few people in the U.S. are aware ... foreign companies such as Coca-Cola, Chiquita, Dole, Standard Oil, *Occidental Petroleum*, etc. control important sectors of Colombia's economy and reap important profits from the Colombian operations ... Money flows from U.S. taxpayers to the U.S. government, to the Colombian military, to the paramilitaries; the latter two use these funds explicitly to remove any obstacles to the profits of foreign companies. Paramilitary incursions clear peasants from valuable land. ... Paramilitary forces patrol companies' premises, enter factories, and selectively kill workers who organize unions, as they have been accused of doing in the La Loma coal mine (owned by the Alabama-based Drummond Co.), Coca-Cola bottling plants, or Urabá's banana plantations. Colombian army units are specially trained to guard U.S. owned

> facilities like Occidental Petroleum's Caño Limón-Coveñas oil pipeline." (emph supp) [*Idem*, p. 11, 12]

NOTE: Counsel ran against Sen. Conrad Burns in the 2006 Republican primary. He located at least one financial contribution of $1,000.00 from Occidental Petroleum to Burns. Ten years ago Mr. Burns voted to transfer $53 million from international humanitarian aid to the military for "drug enforcement." [HR 3540; vote No. 1996-244 on July 25, 1996] When asked in Billings about his HR 3540 vote Burns replied "it is next to impossible to remember every vote".

FEDERALIST SOCIETY'S Separation of Powers and VIETNAM

James MacGregor Burns, attendee at the Jan. 1981 D.C. Constitutional Reform Conference, in his FDR biography "1940-1945, *Roosevelt, Soldier of Freedom*" writes

> "Independence for Indochina had become a near-obsession of the President's during the past year or two" telling "Stalin at Yalta he had in mind a temporary trusteeship for Indochina" to prevent the French from returning. "In March, FDR told Gen. Albert G. Wedemeyer, his top commander in China, not to give any military supplies to the French." p. 591

If "Deputy Prime Minister" Harry Truman had known this he would never have in 1946 given

DeGaulle $1,450,000 to help invade Vietnam. The U.S. lost 58,191 dead and 303,000 (physically) wounded in Vietnam, while the Vietnamese – north and south - lost an estimated 1 to 3.2 million dead.

Does "Separation of Powers" Government mean War is only option?

"There was no categorical imperative which required McKinley to declare war on Spain, Woodrow Wilson to serve an ultimatum on Germany, John F. Kennedy to order the invasion of the Bay of Pigs, or Lyndon Johnson to increase American forces in Vietnam from 20,000 to 500,000. These were all decisions made by human beings who had other options." *Twilight*, pp. 31-32, George E. Reedy, an NAL Book, World Publ. Co. , New York, pp. 31-32.

Respectfully submitted this 3rd day of November, 2007.

Robert L. Kelleher, Sr.

I certify I believe the contents of this document are true to the best of my knowledge, information and belief; that this Petition for Rehearing contains about 2,820 words; and is presented in good faith and not submitted for delay; and that a copy is being mailed on November 5, and 17, 2007 to James M. Scheier, Esq., Assistant Attorney General, P.O. Box 201440, Helena, MT 59620-1440.

Robert L. Kelleher, Sr.